In the High Court of Judicature at Madras

Dated: 10/01/2003

Coram

The Honourable Mr. Justice R.Jayasimha Babu
and
The Honourable Mr. Justice N.V.Balasubramanian

Contempt Appeal No.4 of 1998

Searle (India) Limited,
rep. By its President
Dr.K.K.Maheswari ..... Appellant

-Vs-

M.A.Majid ..... Respondent

Contempt Appeal filed under Section 19(1) of the Contempt of Courts Act, 1971 against the orders of a learned single Judge of this Court in Contempt Application No.214 of 1997 dated 08.01.1998.

!For appellant : Mr. N.L.Rajah

^For respondent : Mr.Perumbulavil Radhakrishnan

:JUDGMENT

(Judgment of the Court was delivered
by R.Jayasimha Babu, J.)

By consent of parties this contempt appeal has been taken up for hearing as this appeal arises out of contempt proceedings for alleged breach of an order of interim injunction. The further order made on the application for injunction was the subject matter of appeal in O. S.A. No.96 of 1997 which has been heard and allowed today.

2. The appellant was the defendant in C.S. No.92 of 1997, a suit filed on the original side of this Court. The prayer made in the suit was to direct the appellant herein to continue the clearing and forwarding agency of the plaintiff as per the agreement between the parties dated 11.11.1986 as renewed and confirmed by letter dated 12.04.199 4. The plaintiff filed an application O.A. No.98 of 1997 seeking an order of interim injunction to restrain the appellant, his agents and servants from acting in any manner upon the termination letter dated 18.01.1997 that had been issued to the plaintiff more than a month prior to the date on which the suit was filed, either by

discontinuing contract or awarding the same to any third party pending disposal of the main suit. The plaintiff was successful in obtaining an ex parte order of interim injunction on 25.02.1997 which was to be in force for a period of two weeks, i.e., till 11.03.1997. While obtaining that order of injunction, the plaintiff did not produce the agreement, injunction against discontinuation of which was sought, and the terms of the agreement were not disclosed to the Court, more particularly, the clause therein which provided that the dispute, if any, between the parties, was to be adjudicated upon by the Court at Bombay in which city the agreement had been entered into. The plaintiff had also failed to disclose to the Court the existence of the arbitration clause in the said agreement.

3. After service of notice, the appellant filed three applications on 06.03.1997 - Application No.911 of 1997 to revoke the leave granted, Application No.912 of 1997 to vacate the interim injunction and Application No.913 of 1997 to refer the dispute for arbitration.

4. All these three applications were listed on 11.03.1997. The applications were not heard on that date, but were adjourned to 18.03.19 97 and the order of interim injunction was extended by a period of one week, till 18.03.1997. Arguments were heard on 18.03.1997 and judgment was reserved. On that day there was no request for extending the injunction till the judgment was pronounced and the Court did not direct it's continuance. Judgment was pronounced on 31.03.1997 allowing the application No.911 of 1997 and revoking the leave that had been granted to the plaintiff to file a suit in this Court. The Court also directed the return of the plaint for being presented before the appropriate Court, but with the further direction that an order of injunction would remain in force for a period of three weeks from 31.03.1997. That order of 31.03.1997 in so far as it directed the issue of interim injunction for a period of three weeks was the subject matter of OSA. No.96 of 1997. That order had been stayed during the pendency of the appeal.

5. The plaintiff in the suit filed the contempt application No.214 of 1997 alleging therein that subsequent to 18.03.1997 when the Court reserved it's orders and prior to 31.03.1997 when the Court pronounced the order, the appellant despatched stocks by itself as well as through some agents and that such act was in contravention of the order of interim injunction that was issued in O.A. No.98 of 1997. The appellant in it's counter to that application pointed out that interim injunction that had been granted on 25.02.1997 expired on 18.03.199 7, as it had been granted initially for two weeks till 11.03.1997 and thereafter had been extended for a period of one week, i.e., till 18 .03.1997 with no further extension thereafter.

6. It was also stated by the appellant that apart from the fact that there was no interim injunction in force between 18.03.1997 and 31.03.1997, the appellant had not done anything which could be regarded as disobedience even of the order of interim injunction that was in force till 18.03.1997. The order of interim injunction that had been issued was only with regard to the discontinuance of the contract with the plaintiff and to restrain the appellant from awarding the agency to any third party. The appellant averred that it had not violated the terms of the agreement, as all that it had done

was to supply goods itself to it's customers, and that it had not done it through any agent. It was further pointed out that even the agency agreement with the plaintiff was a non exclusive one, and even if the plaintiff's agency is deemed to have been extended by reason of the order of interim injunction, nevertheless that would not have come in the way of the appellant acting through other agents.

7. The Court accepted the statement of the appellant that it had only supplied goods directly to it's customers. The Court also accepted the appellant's submission which was borne out by the record, that the order of interim injunction had not been continued beyond 18.03.1997.

8. It was, however, held by the Court that ".....even though the order has not been extended beyond 18.03.1997, the same is deemed to have been in force till 31.03.1997". The Court regarded the supply of goods directly by the appellant to it's customers as amounting to "deemed" discontinuance of the plaintiff agency contrary to the terms of the order of interim injunction. Appellant, it was held, had conducted itself in the way it did, only on the advice of counsel. The appellant was held guilty of contempt "for the willful disobedience of the order of this Court in O.A. No.98 of 1997" and was punished with the fine of Rs.2,000/- to be paid within a week failing which the appellant was to undergo simple imprisonment for a period of three weeks.

9. The importance of the Court's contempt jurisdiction for upholding the rule of law, cannot be overemphasized. Willful disobedience of the Court's order undermines the rule of law. Courts, however, are required to exercise with great care and act with circumspection, as this is "……a drastic jurisdiction where personal freedom is in peril." ((1980) 2 SCC 144, Union of India vs. Satish Chandra Sharma). Contempt jurisdiction being quasi-criminal in nature is not to be exercised except in clear cases.

10. The personal liberty of a citizen is one of the most zealously guarded rights under our Constitution. The Court's concern for personal liberty is no less when the Court is called upon to exercise it's contempt jurisdiction. No person is to be regarded as having violated the order of the Court unless it is shown with reasonable certainty - first, that there exists an order of the Court which directs or prohibits the commission of an act; second, that the order so made is not vague or ambiguous, but is reasonably clear and certain; third, that the person who is alleged to have disobeyed the order had knowledge of the order; and fourth, that the disobedience of such an order of the Court by the alleged contemner was willful.

11. In the case of Suresh vs. Imran Khan, 1995 Supp (3) SCC 306 the apex Court observed that, ".....the proceedings in contempt are in the nature of quasi-criminal proceedings and it must be shown that the litigant in defiance or disobedience of the court's order proceeded to do any act which was in violation thereof. Unless the litigant is aware of a prohibitory order made against him by the court, there can be no desire or intention on his part to flout the court's order. Therefore, unless it is shown that, the litigant was made aware of the order served on his lawyer it may not be possible to hold that despite the knowledge of the order he willfully decided to commit a

breach of the order by acting contrary thereto."

12. A litigant is not to be taken by surprise as to the conduct that is required of him, in the absence of clear and specific direction in an order duly made by the Court. When the plaintiff applies for an injunction, and the Court makes an order granting ex parte injunction for a specific period and thereafter continuing the injunction for a further specified period, and does not renew it at the end of that period, the opposite party is entitled to act on the basis that he is no longer subject to the restraint, unless such opposite party had undertaken acting by himself or t hrough counsel that it would treat the injunction as continued to be in force, thereby making a further order of the Court unnecessary, or the Court had directed orally or otherwise that the parties should not act contrary to the injunction that had been issued earlier for any further period.

13. The fact that on the date of expiry of that injunction the case was heard and judgment reserved, would not, on that score alone have the effect of extending the order of injunction, unless a specific direction to that effect is made by the Court acting on it's own or at the instance of any of the parties.

14. There is no presumption in law that when an interim injunction is issued upto the specified date and the case is heard on that date, but the judgment is not pronounced on the same date, the interim injunction is "deemed" to have continued till such time the judgment is pronounced.

15. Learned counsel drew our attention to that portion of the order under appeal wherein the Court expressed the view that the appellant's conduct was based on counsel's advice and that appellant had not acted on it's own. Counsel submitted that there was neither a plea nor any material to support that view. It was also submitted that that observation carries with it the implication that the counsel had advised his client to deliberately disobey the order of the Court. Reading the order under appeal as a whole, we are certain that no such implication was intended to be conveyed by that observation. We have found on facts that the understanding of the appellant, irrespective of any legal advice, it may or may not have received, that there was no injunction in force after 18.03.1997 and till 31.03.1997, is, indeed, correct.

16. Before parting with the appeal, we must record our strong disapproval of the conduct of the respondent. The respondent obtained leave to file suit in this Court without producing the agreement of agency. That document, had it been produced, would have disclosed that agency agreement was non-exclusive, and that the respondent was not entitled to institute the suit in this Court. That the respondent had no right to file a suit in this Court is evident from the fact that the leave that was initially granted was subsequently revoked by the learned Judge. That order has become final, no appeal having been filed against the same. The respondent here knew full well that his suit in this Court was not maintainable; that his agency was non-exclusive; that there was nothing in the agre ement preventing the Principal from directly supplying the goods or appointing other agents; that

the agency of the appellant had been terminated one month prior to his approaching the Court; that the supply that had been made by the appellant was after the period for which the injunction had been granted had come to an end; and that by effecting such supply, respondent had not contravened the terms of the agreement. Yet the respondent set in motion proceedings in contempt solely with a view to harass the appellant. The contempt jurisdiction cannot be used as a " legal thumb screw" by unscrupulous litigants to compel their opponents to perform or refrain from performing an act which the opponent is otherwise entitled to perform or refrain from performing.

17. The judgment under appeal is set aside, and the contempt application is dismissed. The respondent shall pay to the appellant a sum of Rs.2,000/- as exemplary costs for the abuse of the process of the Court that the respondent had indulged in. CMP. No.3962 of 1998 is closed.

Index : Yes
Website: Yes

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